



REPUBLIC OF KENYA



**Republic v Barak (Criminal Case E046 of 2022)
[2025] KEHC 9412 (KLR) (Crim) (1 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 9412 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CRIMINAL
CRIMINAL CASE E046 OF 2022**

K KIMONDO, J

JULY 1, 2025

BETWEEN

REPUBLIC PROSECUTOR

AND

KEVIN ODUOR BARAK ACCUSED

RULING

1. The accused is charged with murder contrary to section 203 as read with section 204 of the *Penal Code*.
2. The particulars are that on 4th July 2022 at Githaturu, Korogocho area, Starehe Sub-County within Nairobi County he murdered Medrine Magova alias Mama Manu.
3. He pleaded not guilty. The prosecution marshalled six witnesses. I should add that on 12th March 2025, a medical report dated 19th July 2022 by Dr. Kemunto, Consultant Psychiatrist at Mathari Teaching & Referral Hospital, was admitted into the evidence by consent.
4. I am now called upon to determine whether on the totality of that evidence, the accused should be placed on his defence.
5. The Republic lodged submissions dated 16th April 2025. Learned counsel for the defence, Mr. Nzomo, also filed detailed submissions.
6. According to learned counsel for the Republic, Ms. Kigira, there is sufficient direct and circumstantial evidence linking the accused to the homicide; and, that on the totality of the evidence, the accused has a case to answer.
7. But the case for the defence is that the entire trial largely revolved around the unsworn testimony of a child of tender years, E.N.S (PW2). Learned counsel submitted that the evidence was not sufficiently



corroborated or at all. He relied on section 124 of the Evidence Act as well as *Thuo v Republic* (Criminal Appeal 45 of 2013) [2022] KECA 461 (KLR).

8. Learned counsel also argued that the remainder of the evidence was riddled with contradictions and that some material witnesses were not called to the stand. Reliance was further made on a number of precedents including *Kamau v Republic* (Criminal Appeal 58 of 2013) [2024] KECA 314 (KLR) and *Ochieng v Republic* (Criminal Appeal 153 of 2017) [2023] KECA 1461 (KLR)
9. In a nutshell, the defence contends that the prosecution has not laid any foundation to require a rebuttal from the accused; and, that accordingly, the accused should be acquitted.
10. My finding is as follows. The minor (PW2) stated that he saw his father (the accused) fighting with his mother outside their plot; and, that the accused picked a piece of wood which had a nail and hit deceased. He said the deceased was throwing stones and advised him to go to his aunt's (PW1's) place.
11. He went there and stayed until 20:00 or 20:30 hours when he returned home. That is when he found the lifeless body of his mother lying on the sofa with a pool of blood on the carpet. He screamed for help. A neighbor responded and stayed with him until the police arrived at the scene.
12. The aunt referred to was Phylis Imali (PW1). She confirmed that PW2 came to her house on the material day at about 16:00 hours and left at around 20:00 hours. However, the minor did not give her any clues about what had transpired. She testified that the deceased and accused had a difficult relationship and used to fight; and, that on one occasion she came to her house with a bloodstained T-shirt.
13. On 4th July 2022 at about 23:00 hours, she got a call from her other sister notifying her of the homicide. She went to the scene and saw the deceased's body. She said it had a stab wound on the thigh. The scene was processed by the police and the body removed to the mortuary.
14. There is then the evidence of the pathologist, Dr. Simon Omuok. He conducted the post mortem at the City Mortuary on 19th July 2022. Externally, there was a small wedge-shaped laceration below the skin on the right thigh area. But his opinion was that death resulted from "head injury due to blunt force trauma".
15. Upon the digest of the testimony of the six witnesses and the documentary evidence, and guided by the holding in *Bhatt v Republic* [1957] E.A. 332 and *R v Kipkering arap Koske & another* 16 EACA 135 (1949), I find that the Republic has established a prima facie case against the accused.
16. Accordingly, under the provisions of section 306 (2) of the Criminal Procedure Code, I now place the accused on his defence.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 1ST DAY OF JULY 2025.

KANYI KIMONDO

JUDGE.

Ruling read virtually on Microsoft Teams in the presence of-
Accused.

Ms. Kigira for the Republic instructed by the Office of the Director of Public Prosecutions.

Mr. Nzomo for the accused instructed by Mwirigi Nzomo & Company Advocates.

Mr. E. Ombuna, Court Assistant.

